

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN**

GRAND TRAVERSE BAND OF
OTTAWA AND CHIPPEWA INDIANS;
GRAND TRAVERSE BAY WATERSHED
INITIATIVE, INC.; and ELK-SKEGEMOG
LAKES ASSOCIATION,

Civil Action No.: _____

COMPLAINT

Plaintiffs,

v.

BURNETTE FOODS, INCORPORATED

Defendant,

I. INTRODUCTION

1. This is a citizen enforcement suit and Michigan Environmental Protection Act (“MEPA”) suit brought pursuant to the citizen suit enforcement provisions of the Federal Water Pollution Control Act, 33 U.S.C. § 1365 (the “Clean Water Act” or “CWA”) and Section 1701 of the Natural Resources and Environmental Protection Act, MCL 324.1701(1), by the Grand Traverse Band of Ottawa and Chippewa Indians; the Grand Traverse Bay Watershed Initiative, Inc. doing business as The Watershed Center Grand Traverse Bay; and Elk-Skegemog Lakes Association (collectively, “Plaintiffs”) against Burnette Foods, Incorporated (“Burnette” or “Defendant”) to redress and prevent ongoing violations of Section 301(a) of the Clean Water Act, to preserve the Indian tribe’s treaty-reserved rights, and to protect the water and other natural resources and the public trust in those resources from pollution, impairment, or destruction in accordance with Section 1701(1) of the Natural Resources and Environmental Protection Act.

2. Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant into waters of the United States from a “point source,” unless the discharge complies with various enumerated sections of the CWA. Section 301(a) prohibits discharges not authorized by or in violation of the terms of a valid National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

3. Section 1701(1) of the Natural Resources and Environmental Protection Act, MCL 324.1701(1) (commonly referred to as the Michigan Environmental Protection Act or MEPA), allows any person to maintain an action for declaratory and equitable relief against any person for the protection of the air, water, and other natural resources and the public trust in these resources from pollution impairment, or destruction.

4. Burnette owns and operates a fruit processing facility (“Facility”) located at 701 US-31 South in Elk Rapids, Antrim County, Michigan.

5. NPDES Permit No. MI0000485 (“NPDES Permit”), issued pursuant to Part 31, Water Resources Protection, of the Natural Resources Environmental Protection Act, P.A. 451 of 1994 (“Part 31”) authorizes Burnette to discharge pollutants to waters of the United States and sets out terms and conditions with which Burnette must comply. The NPDES Permit authorizes Burnette to discharge a maximum of 0.072 million gallons per day of contact cooling water through an outfall to Elk River.

6. Groundwater Permit No. GW1810211 (“Groundwater Permit”), issued pursuant to Part 22, Water Resources Protection, of the Natural Resources Environmental Protection Act, P.A. 451 of 1994 authorizes Burnette to discharge 425,000 gallons per day and 15,000,000 gallons per year of process wastewater to the groundwater in the NW $\frac{1}{4}$ of the SW $\frac{1}{4}$, Section 28, T29N, R09W, Elk Rapids, Antrim County, Michigan in accordance with the maximum daily limits described therein.

7. The Facility generates wastewater through typical production and cleaning activities related to the handling and processing of fruit, including washing, production flumes, cutting, and sanitation.

8. A small percentage of the Facility's wastewater is discharged to the publicly owned treatment works pursuant to an Industrial Pretreatment Program permit issued by the Village of Elk Rapids.

9. Any remaining wastewater is discharged through a land treatment system in accordance with the Groundwater Permit.

10. The land treatment system utilizes a combination of spray irrigation systems and drip irrigation systems to discharge the wastewater to its spray fields ("Spray Fields").

11. The Spray Fields consists of four fields: Field 39, Field 38, Field 37, and Field 36. Field 39 is managed as one 4.0-acre spray field; Field 38 is managed as one 8.0-acre spray field and one 8.1-acre drip field; Field 37 is managed as one 6.7-acre spray field and one 8.1-acre drip field; and Field 36 is divided into 10-acre sub-sites for spray.

12. Each of the four Spray Fields is adjacent to wetlands ("Wetlands") that drain to Spencer Creek which outlets into Elk Lake and its connecting waters (collectively, "Waterbodies") as illustrated by Figure 1 below:

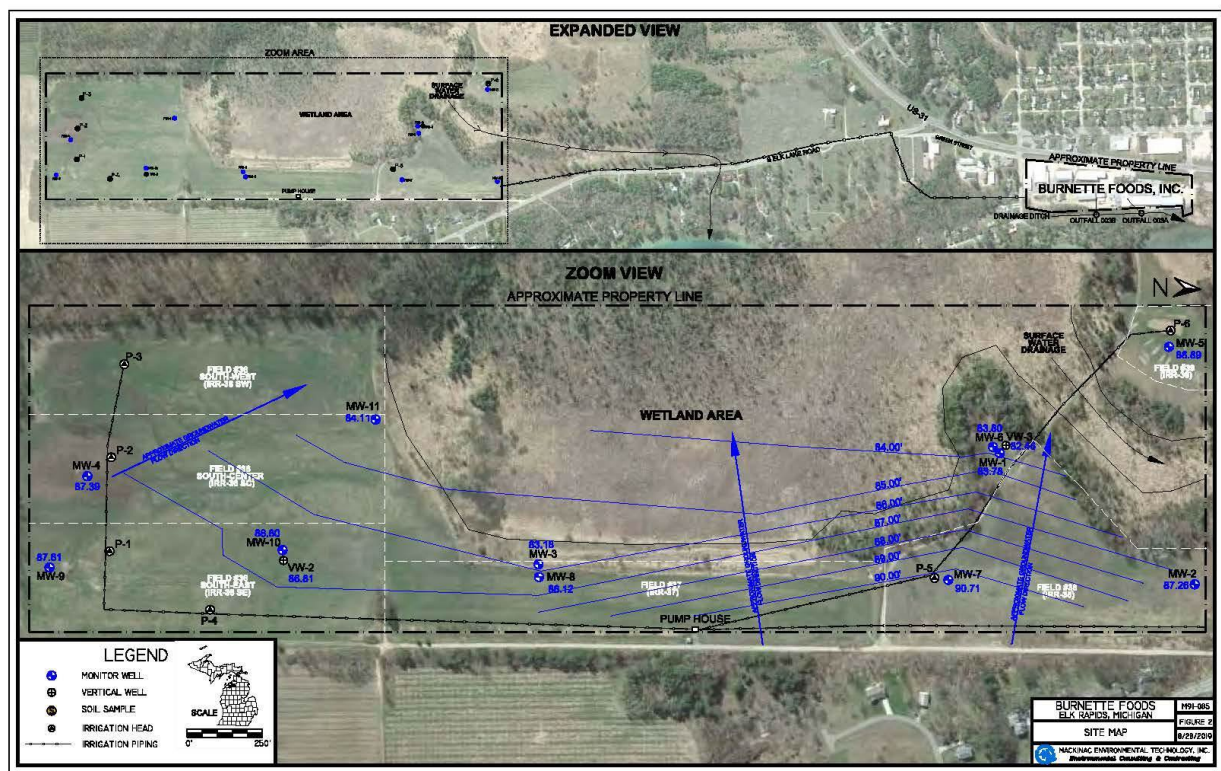


Figure 1 - Site Map of Burnette Foods Spray Fields

13. The Spray Fields are sloped towards the Wetlands causing any surface water runoff from the excessive application of wastewater effluent to the Spray Fields to generally flow towards and into the Wetlands.

14. Shallow groundwater in the area immediately underlying the Spray Fields generally flows towards the Wetlands.

15. On numerous occasions over the past five years, particularly during the months of July, August, and September, unnatural qualities have been observed in Spencer Creek downstream of Burnette's Spray Fields, including unnatural foam, strong odors, discoloration, and orange and red settleable solids along the creek bottom. *See*, Ex. 1, Clean Water Act Notice of Intent to Sue/60-day Notice Letter, Appendix A.

16. EGLE has issued to Burnette several violation notices on August 21, 2019, November 6, 2020, and November 15, 2021, citing Burnette for hundreds of violations of the Clean Water Act and its Groundwater Permit.

17. In the violation notice issued by EGLE to Burnette foods on August 21, 2019, EGLE cited Burnette for the unpermitted discharge of its wastewater effluent to the Wetlands, as well as over 100 violations of its Groundwater Permit, and required Burnette to prepare an evaluation and sampling analysis plan to assess numerous wastewater effluent parameters, including *E. coli*. Ex. 2, Mich. Dep't of Env't, Great Lakes, and Energy, Violation Notice No. VN-009839.

18. In its response to the August 21, 2019, violation notice, Burnette contested EGLE's requirement to evaluate and sample for *E. coli*, stating that there is no potential for *E. coli* as a result of spray irrigation practices. Ex. 3, Burnette Foods, Response to Violation Notice No. VN-009839 at 6.

19. On July 27, 2021, EGLE tested Burnette's wastewater effluent for *E. coli* bacteria, found *E. coli* was present in Burnette's wastewater effluent, and reiterated EGLE's requirement for a sampling plan for *E. coli* in Burnette's wastewater effluent. Ex. 4, Mich. Dept. of Env't, Great Lakes, and Energy, Violation Notice No. VN-012414 at 4-5.

20. On numerous dates from June through July of 2021, the Plaintiff Elk-Skegemog Lakes Association collected water samples from numerous points along Spencer Creek to test for *E. coli* concentrations. Analytical results of these samples found *E. coli* concentrations regularly above 300 *E. coli* per 100 milliliters of water, with concentrations ranging from 345 *E. coli* per 100 milliliters of water to greater than 2,419 *E. coli* per 100 milliliters of water. Ex. 1, Clean Water Act Notice of Intent to Sue/60-day Notice Letter at 9-10.

21. All surface waters of the state are protected for total body contact recreation from May 1 to October 31. All surface waters of the state protected for total body contact recreation shall not contain more than 130 *E. coli* per 100 milliliters of water based on a 30-day geometric mean or a maximum of 300 *E. coli* per 100 milliliters. Mich. Admin. Code, R 323.1100(2); Mich. Admin. Code, R. 323.1062(1).

22. Based on information and belief, Burnette has not developed or implemented any plan for monitoring for the presence of *E. coli* in its wastewater effluent, groundwater, or nearby surface waters.

23. Water sample results collected by EGLE on July 27, 2021, in Spencer Creek—which is considered a warm water stream—indicate that the dissolved oxygen was 1.87 mg/L. The minimum standard for dissolved oxygen in warm water streams in Part 4 Water Quality Standards under Part 31 is 4 mg/L, or 5 mg/L as a daily average. Ex. 4, Mich. Dept. of Env’t, Great Lakes, and Energy, Violation Notice No. VN-012414 at 5; Mich. Admin. Code, R 323.1064(2)(b).

24. Water sample results collected by EGLE on June 27, 2021, in the Wetlands adjacent to Burnette’s Spray Fields indicate that total arsenic was 17 ug/L. The concentration of arsenic is above the generic groundwater surface water interface and surface water standard of 10 ug/L for arsenic. Ex. 4, Mich. Dept. of Env’t, Great Lakes, and Energy, Violation Notice No. VN-012414 at 4.

25. Water sample results collected by EGLE in the Wetlands adjacent to Burnette’s Spray Fields indicated an unnaturally high biological oxygen demand (“BOD”) concentration of 1,910 mg/L. *Id.* at 4.

26. According to EGLE, overapplication of high strength wastewater (i.e., wastewater with a high BOD concentration) at the Spray Fields has mobilized arsenic in the groundwater and has resulted in the flow of impacted groundwater to the Wetlands. *Id.*

27. Plaintiffs seek declaratory and injunctive relief, civil penalties, litigation costs, and other relief that may be ordered by the Court to bring Burnette into compliance with its Groundwater Permit, NPDES Permit, the Clean Water Act, and the Michigan Environmental Protection Act.

II. JURISDICTION

28. This Court has subject matter jurisdiction over the parties and subject matter jurisdiction of this action pursuant to Section 505(a)(1) of the Clean Water Act, 33 U.S.C. § 1365(a)(1), 28 U.S.C. § 1331 (a civil action arising under the Constitution and laws of the United States), 28 U.S.C. § 1362 (a civil action brought by an Indian tribe or band with a governing body duly recognized by the Secretary of the Interior arising under the Constitution, laws, or treaties of the United States), and 28 U.S.C. § 1367(a) (a civil action with other claims that are so related to claims in action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution).

29. Plaintiffs have complied with the statutory notice requirements under Section 505(a)(1) of the CWA, 33 U.S.C. § 1365(a)(1), and the corresponding regulations at 40 C.F.R. § 135.2.

30. On November 17, 2022, Plaintiffs provided all requisite parties with notice of its intention to file suit for violations of the CWA at the Facility by sending a 60-day notice letter via certified mail pursuant to 33 U.S.C. § 1365(a)(1) and 40 C.F.R. § 135.2(a)(2). *See*, Ex. 1, Clean Water Act Notice of Intent to Sue/60-day Notice Letter, Appendix A.

31. A copy of the notice letter was sent to the Administrator of the United States Environmental Protection Agency (“EPA”), the Administrator of EPA Region 5, and the Director of the Michigan

Department of Environment, Great Lakes, and Energy pursuant to CWA, 33 U.S.C. § 1365(b)(1)(A) and 40 C.F.R. § 135.2(a)(2).

32. Upon information and belief, neither the EPA nor the State of Michigan has commenced or is diligently prosecuting a civil action to address the violations alleged in this complaint. 33 U.S.C. § 1365(b)(1)(B).

III. PARTIES

33. Plaintiff Grand Traverse Band of Ottawa and Chippewa Indians (“GTB”) is a federally-recognized Indian tribe (*see* 88 Fed. Reg. 2112, at 2113 (January 12, 2023)) headquartered in Leelanau County with a six-county primary service area consisting of Antrim, Benzie, Charlevoix, Grand Traverse, Leelanau, and Manistee Counties. The historic Grand Traverse bands were signatory to the March 28, 1836 Treaty of Washington (7 Stat. 491) (“1836 Treaty”), by which GTB and the other intervening-plaintiff Indian Tribes in the “*United States v. Michigan*” litigation (W.D. Mich. Case No. 2:73-cv-26) reserved off-reservation fishing rights in portions of the Great Lakes (including the Grand Traverse Bay area of Lake Michigan adjacent to Elk Lake) declared in *United States v. Michigan*, 471 F. Supp. 192 (W.D. Mich. 1979), *aff’d*, 653 F.2d 277 (6th Cir. 1981), *cert. denied*, 454 U.S. 1124 (1981). In the 1836 Treaty GTB also reserved usufructuary fishing, hunting, trapping and gathering rights in inland portions of the cession that were confirmed by the November 2, 2007 Consent Decree (W.D. Mich. Case No. 2:73-cv-26, ECF No. 1799). GTB has the duty under its Constitution approved by the Secretary of the Interior to preserve and protect the natural resources within the 1836 Treaty-ceded territory; therefore it is crucial for GTB to protect and restore the species and habitats vital to the continued responsible utilization of these resources. GTB’s treaty-reserved rights “are property rights protected by the United States Constitution.” *Grand Traverse Band of Ottawa and Chippewa Indians v. Director, Michigan*

Department of Natural Resources, 971 F. Supp. 282, 288 (W. D. Mich. 1995), *aff'd*. 141 F.3d 635 (6th Cir. 1998), *cert. denied*, 525 U.S.1040 (1998). These treaty rights are likely to be adversely impaired by Defendant's continuing illegal discharges of pollutants into both air and water.

34. Grand Traverse Bay Watershed Initiative, Inc., d/b/a The Watershed Center Grand Traverse Bay (TWC) is a Michigan nonprofit organization. The mission of TWC is to advocate for clean water in Grand Traverse Bay and act to protect and preserve its watershed. TWC's Grand Traverse BAYKEEPER® (Baykeeper) is one of over 300 WATERKEEPER® organizations representing the international WATERKEEPER® ALLIANCE. The Baykeeper protects water quality by advocating, educating, monitoring, and patrolling Grand Traverse Bay and its watershed. TWC and the Baykeeper advocate for policies and actions that protect and preserve water quality, including the use of litigation and administrative challenges to ensure wetlands, lakes, rivers, beaches, and streams within the Grand Traverse Bay watershed meet all substantive water quality standards guaranteed by federal, state, and local statutes and regulations. The office of TWC and the Baykeeper is located at 13170 South West Bay Shore Drive, Suite 102, Traverse City, MI 49684.

35. The Elk-Skegemog Lakes Association (ESLA) is a Michigan nonprofit organization. ESLA promotes an understanding and appreciation of the rights and responsibilities of riparian landowners and takes necessary or desirable actions to protect and preserve the environment of the Elk-Skegemog watershed with a focus on water quality. ESLA conducts periodic scientific water quality tests of the watershed and aims to solve problems involving lake levels, water safety, greenbelts and water pollution that could lead to the deterioration of water quality. The mailing address for ESLA is P.O. Box 8, Elk Rapids, MI 49629.

36. Burnette Foods, Incorporated is a Michigan Domestic Profit Corporation which owns and operates a fruit processing facility (“Facility”) located at 701 US-31 South in Elk Rapids, Antrim County, Michigan.

IV. STATEMENT OF STANDING

37. The Facility discharges pollutants into the groundwater which then travels to the Wetlands bordering its Spray Fields. The Facility also discharges pollutants directly into the Wetlands bordering its Spray Fields. These Wetlands are headwaters for Spencer Creek, which begins on Burnette-owned property. Spencer Creek flows approximately 3,000 feet before flowing into Elk Lake.

38. The Plaintiffs’ members use and enjoyment of waterbodies impacted by the Facility have been, are being, and will continue to be adversely affected by Burnette’s failure to comply with the Clean Water Act, its Groundwater Permit, and the Michigan Environmental Protection Act. Plaintiffs’ members use Elk Lake for a variety of recreational activities, including boating, fishing, kayaking, canoeing, and swimming. Additionally, ESLA’s members are riparian owners who own property along Elk Lake, Lake Skegemog, the Elk River and Torch River. The property value of such riparian property is dependent on the ecological integrity of those waters. Plaintiff GTB’s property rights in the treaty-reserved natural resources are an independent basis for standing.

39. Violations of the Clean Water Act, Groundwater Permit, and the Michigan Environmental Protection Act not only affect the Wetlands, Spencer Creek, Elk Lake and its connecting waters but also impair the treaty and property rights of GTB to hunt, fish, and gather (collectively, “Usufructuary Rights”) across the 1836 Treaty-ceded territory, which includes the Wetlands, Spencer Creek, Elk Lake and its connecting waters, including adjacent Lake Michigan waters.

40. The United States Supreme Court has affirmed that treaties between the United States and American Indian tribes are “not a grant of rights to the Indians, but a grant of rights from them, a reservation of those not granted.” *United States v. Winans*, 198 U.S. 371, 381 (1905).

41. The Usufructuary Rights reserved by GTB in exchange for the cessation of 13.8 million acres of land are dependent on the ecological integrity of the land and waterways within the land ceded by the 1836 Treaty. State and federal water quality standards and permits exist in part to ensure that these Usufructuary Rights protected.

42. Burnette’s violations of the CWA, its Groundwater Permit, and the Michigan Environmental Protection Act negatively affect the Plaintiffs’ members’ use of the Wetlands, Spencer Creek, and Elk Lake and connecting waters because Burnette’s effluent and pollutant discharges negatively impact aquatic species and create unnatural quantities of foam, discoloration, and settleable solids in Spencer Creek and unnatural color in Elk Lake. These impacts have contributed to a reasonable fear of pollution from Burnette and reduce the Plaintiffs’ members’ ability to use and enjoy the Waterbodies.

43. Burnette’s violations also harm the organizational interests of the Plaintiffs. The protection and improvement of the environment and water quality of the Waterbodies are important parts of each Plaintiff’s mission. A critical component of these goals is ensuring compliance with federal and state environmental laws and regulations, including the Clean Water Act and the Michigan Environmental Protection Act. When Burnette violates federal and state environmental laws as well as its Groundwater Permit, it adversely affects water quality and in turn the organizational interests of the Plaintiffs.

44. For the reasons described above, the Plaintiffs have suffered and continue to suffer injury-in-fact from Burnette’s failure to comply with the Clean Water Act, the Michigan Environmental

Protection Act, and its Groundwater Permit. This injury is fairly traceable to Burnette's conduct and would be redressed by the relief the Plaintiffs seek in this action.

V. FACTUAL ALLEGATIONS

VIOLATIONS OF NUMERIC POLLUTANT LIMITS

45. According to its Groundwater Permit, Burnette must test and report its wastewater effluent for numerous water quality parameters. It also must monitor and report nearby surface water and groundwater for numerous water quality parameters commonly associated with its wastewater effluent. These parameters include, but are not limited to, biological oxygen demand ("BOD"), nitrogen, ammonia, pH, dissolved oxygen ("DO"), chloride, sodium, and total phosphorus. Ex. 5, Mich. Dep't of Env't, Great Lakes and Energy, Groundwater Permit No. GW1810211 at 5.

46. The Groundwater Permit requires Brunette to submit monthly Discharge Monitoring Reports ("DMRs") that summarize and report monitoring data regarding the effluent parameters and application rates described in ¶ 45.

47. A true copy of all DMRs for periods during which there was a violation of a numeric pollutant limit are attached as Exhibit 6.

48. According to DMRs submitted by Burnette to EGLE, on numerous occasions over the past five years the discharge of wastewater effluent by Burnette has resulted in exceedances of the numeric effluent limits specified in its Groundwater Permit and instances in which pH is below the minimum required limit. A table summarizing Burnette's violations of its numeric effluent limits as of the date of this complaint is provided below:

Date	Monitor Location	Reported Value	Limit
2/28/2023	Final Effluent (1)	540 mg/L of Chloride	500 mg/L of Chloride
1/19/2023	Final Effluent (1)	432 mg/L of Sodium	400 mg/L of Sodium
10/10/2022	Final Effluent (1)	490 mg/L of Sodium	400 mg/L of Sodium
9/6/2022	Final Effluent (1)	678 mg/L of Sodium	400 mg/L of Sodium
6/9/2022	Final Effluent (1)	628 mg/L of Sodium	400 mg/L of Sodium
5/19/2022	Final Effluent (1)	785 mg/L of Sodium	400 mg/L of Sodium
4/8/2022	Final Effluent (1)	439 mg/L of Sodium	400 mg/L of Sodium
3/10/2022	Final Effluent (1)	418 mg/L of Sodium	400 mg/L of Sodium
2/8/2022	Final Effluent (1)	413 mg/L of Sodium	400 mg/L of Sodium
2/24/2022	Final Effluent (1)	699 mg/L of Sodium	400 mg/L of Sodium
2/24/2022	Final Effluent (1)	527 mg/L of Chloride	500 mg/L of Chloride
1/6/2022	Final Effluent (1)	463 mg/L of Sodium	400 mg/L of Sodium
1/27/2022	Final Effluent (1)	587 mg/L of Sodium	400 mg/L of Sodium
12/8/2021	Final Effluent (1)	436 mg/L of Sodium	400 mg/L of Sodium
10/7/2021	Final Effluent (1)	422 mg/L of Sodium	400 mg/L of Sodium
6/17/2021	Final Effluent (1)	480 mg/L of Sodium	400 mg/L of Sodium
6/28/2021	Final Effluent (1)	488 mg/L of Sodium	400 mg/L of Sodium
5/5/2021	Final Effluent (1)	647 mg/L of Sodium	400 mg/L of Sodium
5/18/2021	Final Effluent (1)	754 mg/L of Sodium	400 mg/L of Sodium
4/7/2021	Final Effluent (1)	452 mg/L of Sodium	400 mg/L of Sodium
4/27/2021	Final Effluent (1)	816 mg/L of Sodium	400 mg/L of Sodium
3/12/2021	Final Effluent (1)	890 mg/L of Sodium	400 mg/L of Sodium
3/30/2021	Final Effluent (1)	981 mg/L of Sodium	400 mg/L of Sodium
2/2/2021	Final Effluent (1)	623 mg/L of Sodium	400 mg/L of Sodium
2/23/2021	Final Effluent (1)	921 mg/L of Sodium	400 mg/L of Sodium

2/23/2021	Final Effluent (1)	545 mg/L of Chloride	500 mg/L of Chloride
1/12/2021	Final Effluent (1)	838 mg/L of Sodium	400 mg/L of Sodium
12/10/2020	Final Effluent (1)	735 mg/L of Sodium	400 mg/L of Sodium
12/16/2020	Final Effluent (1)	538 mg/L of Sodium	400 mg/L of Sodium
11/19/2020	Final Effluent (1)	507 mg/L of Sodium	400 mg/L of Sodium
11/24/2020	Final Effluent (1)	845 mg/L of Sodium	400 mg/L of Sodium
10/12/2020	Final Effluent (1)	516 mg/L of Sodium	400 mg/L of Sodium
10/21/2020	Final Effluent (1)	469 mg/L of Sodium	400 mg/L of Sodium
9/23/2020	Final Effluent (1)	1040 mg/L of Sodium	400 mg/L of Sodium
5/7/2020	Final Effluent (1)	899 mg/L of Sodium	400 mg/L of Sodium
5/27/2020	Final Effluent (1)	545 mg/L of Sodium	400 mg/L of Sodium
4/9/2020	Final Effluent (1)	401 mg/L of Sodium	400 mg/L of Sodium
2/13/2020	Final Effluent (1)	464 mg/L of Sodium	400 mg/L of Sodium
2/13/2020	Final Effluent (1)	503 mg/L of Chloride	500 mg/L of Chloride
2/25/2020	Groundwater (G2)	pH 6.43 SU	Minimum pH 6.5 SU
2/25/2020	Groundwater (G2)	pH 6.03 SU	Minimum pH 6.5 SU
1/14/2020	Final Effluent (1)	492 mg/L of Sodium	400 mg/L of Sodium
12/9/2019	Final Effluent (1)	602 mg/L of Sodium	400 mg/L of Sodium
12/17/2019	Final Effluent (1)	440 mg/L of Sodium	400 mg/L of Sodium
11/13/2019	Final Effluent (1)	1120 mg/L of Sodium	400 mg/L of Sodium
11/13/2019	Final Effluent (1)	586 mg/L of Chloride	500 mg/L of Chloride
11/25/2019	Final Effluent (1)	411 mg/L of Sodium	400 mg/L of Sodium
10/10/2019	Final Effluent (1)	666 mg/L of Sodium	400 mg/L of Sodium
6/13/2019	Final Effluent (1)	415 mg/L of Sodium	400 mg/L of Sodium
6/27/2019	Final Effluent (1)	998 mg/L of Sodium	400 mg/L of Sodium
5/8/2019	Final Effluent (1)	567 mg/L of Sodium	400 mg/L of Sodium

4/9/2019	Final Effluent (1)	533 mg/L of Sodium	400 mg/L of Sodium
4/24/2019	Final Effluent (1)	511 mg/L of Sodium	400 mg/L of Sodium
3/11/2019	Final Effluent (1)	758 mg/L of Sodium	400 mg/L of Sodium
3/11/2019	Final Effluent (1)	592 mg/L of Chlorine	500 mg/L of Chlorine
2/12/2019	Final Effluent (1)	506 mg/L of Sodium	400 mg/L of Sodium
2/12/2019	Final Effluent (1)	565 mg/L of Chlorine	500 mg/L of Chlorine
2/26/2019	Final Effluent (1)	10.20 mg/L of Phosphorus	10 mg/L of Phosphorus
1/23/2019	Final Effluent (1)	455 mg/L of Sodium	400 mg/L of Sodium
1/31/2019	Final Effluent (1)	553 mg/L of Sodium	400 mg/L of Sodium
11/13/2018	Groundwater (G2)	pH 5.64 SU	Minimum pH 6.5 SU
11/13/2018	Groundwater (G2)	pH 5.58 SU	Minimum pH 6.5 SU
11/13/2018	Groundwater (G2)	pH 5.76 SU	Minimum pH 6.5 SU
11/13/2018	Groundwater (G2)	pH 6.23 SU	Minimum pH 6.5 SU
11/13/2018	Groundwater (G2)	pH 6.04 SU	Minimum pH 6.5 SU
11/13/2018	Groundwater (G2)	pH 6.3 SU	Minimum pH 6.5 SU
11/13/2018	Groundwater (G2)	pH 6.28 SU	Minimum pH 6.5 SU
11/13/2018	Groundwater (G2)	pH 6.46 SU	Minimum pH 6.5 SU
11/13/2018	Groundwater (G2)	pH 6.24 SU	Minimum pH 6.5 SU
11/13/2018	Groundwater (G2)	pH 6.05 SU	Minimum pH 6.5 SU
8/22/2018	Groundwater (G2)	pH 6.32 SU	Minimum pH 6.5 SU
8/22/2018	Groundwater (G2)	pH 6.26 SU	Minimum pH 6.5 SU
2/19/2018	Final Effluent (1)	431 mg/L of Sodium	400 mg/L of Sodium
1/8/2018	Final Effluent (1)	415 mg/L of Sodium	400 mg/L of Sodium
1/26/2018	Final Effluent (1)	468 mg/L of Sodium	400 mg/L of Sodium

VIOLATIONS OF NUMERIC WASTEWATER DISCHARGE RATES

49. According to its Groundwater Permit, Burnette must comply with many numeric wastewater discharge rate limits at each of its Spray Fields in regards to both spray and drip applications of wastewater effluent.

50. According to its Groundwater Permit, Burnette must monitor and report the daily and weekly application rates of its wastewater effluent at each of its Spray Fields. *Id.*

51. The Groundwater Permit requires Brunette to submit monthly Discharge Monitoring Reports (“DMRs”) that summarize and report monitoring data regarding the application rates described in ¶ 49.

52. When wastewater discharge rate limits are exceeded or when wastewater is applied to saturated soils, such as after heavy rains, the hydraulic capacity of the soils in the Spray Fields are exceeded, causing runoff to the Wetlands.

53. According to DMRs submitted by Burnette to EGLE, on numerous occasions over the past five years Burnette has discharged wastewater effluent at rates that exceed its numeric wastewater discharge rate limits. A table summarizing Burnette’s violations of its numeric discharge limits as of the date of this complaint is provided below:

Date	Field	Reported Value	Limit
7/9/2022	Field 37	.43 in/day	.34 in/day
7/13/2022	Field 37	.47 in/day	.34 in/day
7/21/2022	Field 37	.35 in/day	.34 in/day
7/8/2022	Field 38	.77 in/day	.68 in/day
9/11/2021	Field 36 South Central	.38 in/week	.34 in/week
9/11/2021	Field 36 South East	.38 in/week	.34 in/week

9/11/2021	Field 36 South West	.38 in/week	.34 in/week
8/3/2021	Field 36 South Central	.42 in/day	.34 in/day
8/3/2021	Field 36 South East	.42 in/day	.34 in/day
8/3/2021	Field 36 South West	.42 in/day	.34 in/day
8/5/2021	Field 37	.65 in/day	.34 in/day
8/4/2021	Field 38	.73 in/day	.68 in/day
7/10/2021	Field 36 South Central	.39 in/day	.34 in/day
7/25/2021	Field 36 South Central	.37 in/day	.34 in/day
7/10/2021	Field 36 South East	.39 in/day	.34 in/day
7/25/2021	Field 36 South East	.37 in/day	.34 in/day
7/10/2021	Field 36 South West	.39 in/day	.34 in/day
7/25/2021	Field 36 South West	.37 in/day	.34 in/day
7/3/2021	Field 37	.80 in/day	.34 in/day
7/7/2021	Field 37	.67 in/day	.34 in/day
7/8/2021	Field 37	.62 in/day	.34 in/day
7/12/2021	Field 37	.96 in/day	.34 in/day
7/13/2021	Field 37	.78 in/day	.34 in/day
7/16/2021	Field 37	.98 in/day	.34 in/day
7/17/2021	Field 37	2.72 in/week	2.04 in/week
7/19/2021	Field 37	.84 in/day	.34 in/day
7/22/2021	Field 37	.70 in/day	.34 in/day
7/31/2021	Field 37	1.00 in/day	.34 in/day
7/11/2021	Field 38	.80 in/day	.68 in/day
7/12/2021	Field 38	.80 in/day	.68 in/day
7/16/2021	Field 38	.82 in.day	.68 in/day
7/24/2021	Field 38	1.04 in/day	.68 in/day

7/26/2021	Field 38	.84 in/day	.68 in/day
7/27/2021	Field 38	.78 in/day	.68 in/day
7/30/2021	Field 38	.76 in/day	.68 in/day
9/5/2020	Field 36 South Central	.47 in/week	.34 in/week
9/12/2020	Field 36 South Central	.45 in/week	.34 in/week
9/5/2020	Field 36 South East	.47 in/week	.34 in/week
9/12/2020	Field 36 South East	.45 in/week	.34 in/week
9/5/2020	Field 36 South West	.47 in/week	.34 in/week
9/12/2020	Field 36 South West	.45 in/week	.34 in/week
8/7/2020	Field 36 South Central	.38 in/day	.34 in/day
8/10/2020	Field 36 South Central	.38 in/day	.34 in/day
8/7/2020	Field 36 South East	.38 in/day	.34 in/day
8/10/2020	Field 36 South East	.38 in/day	.34 in/day
8/7/2020	Field 36 South West	.38 in/day	.34 in/day
8/10/2020	Field 36 South West	.38 in/day	.34 in/day
8/3/2020	Field 37	.90 in/day	.34 in/day
8/6/2020	Field 37	.67 in/day	.34 in/day
8/11/2020	Field 37	.52 in/day	.34 in/day
8/13/2020	Field 37	.62 in/day	.34 in/day
8/2/2020	Field 38	1.46 in/day	.68 in/day
7/24/2020	Field 36 South Central	.37 in/day	.34 in/day
7/25/2020	Field 36 South Central	.42 in/day	.34 in/day
7/29/2020	Field 36 South Central	.35 in/day	.34 in/day
7/31/2020	Field 36 South Central	.37 in/day	.34 in/day
7/24/2020	Field 36 South East	.37 in/day	.34 in/day
7/25/2020	Field 36 South East	.42 in/day	.34 in/day

7/29/2020	Field 36 South East	.35 in/day	.34 in/day
7/31/2020	Field 36 South East	.37 in/day	.34 in/day
7/24/2020	Field 36 South West	.37 in/day	.34 in/day
7/25/2020	Field 36 South West	.42 in/day	.34 in/day
7/29/2020	Field 36 South West	.35 in/day	.34 in/day
7/31/2020	Field 36 South West	.37 in/day	.34 in/day
7/1/2020	Field 37	.40 in/day	.34 in/day
7/27/2020	Field 37	.64 in/day	.34 in/day
7/30/2020	Field 37	1.02 in/day	.34 in/day
7/23/2020	Field 38	.71 in/day	.34 in/day
5/2/2020	Field 36 South Central	.72 in/week	.34 in/week
5/9/2020	Field 36 South Central	.43 in/week	.34 in/week
5/16/2020	Field 36 South Central	.42 in/week	.34 in/week
5/2/2020	Field 36 South East	.51 in/week	.34 in/week
5/9/2020	Field 36 South East	.43 in/week	.34 in/week
5/16/2020	Field 36 South East	.42 in/week	.34 in/week
5/9/2020	Field 36 South West	.43 in/week	.34 in/week
5/16/2020	Field 36 South West	.42 in/week	.34 in/week
4/4/2020	Field 36 South Central	.42 in/week	.34 in/week
4/11/2020	Field 36 South Central	.40 in/week	.34 in/week
4/18/2020	Field 36 South Central	.35 in/week	.34 in/week
4/25/2020	Field 36 South Central	.41 in/week	.34 in/week
3/7/2020	Field 36 South Central	.38 in/week	.34 in/week
3/14/2020	Field 36 South Central	.36 in/week	.34 in/week
3/21/2020	Field 36 South Central	.54 in/week	.34 in/week

3/28/2020	Field 36 South Central	.47 in/week	.34 in/week
2/1/2020	Field 36 South Central	.42 in/week	.34 in/week
2/8/2020	Field 36 South Central	.44 in/week	.34 in/week
2/15/2020	Field 36 South Central	.49 in/week	.34 in/week
2/22/2020	Field 36 South Central	.51 in/week	.34 in/week
2/29/2020	Field 36 South Central	.61 in/week	.34 in/week
1/11/2020	Field 36 South Central	.40 in/week	.34 in/week
1/18/2020	Field 36 South Central	.46 in/week	.34 in/week
1/25/2020	Field 36 South Central	.43 in/week	.34 in/week
11/23/2019	Field 36 South Central	.35 in/week	.34 in/week
11/2/2019	Field 36 South East	.58 in/week	.34 in/week
10/19/2019	Field 36 South East	.43 in/week	.34 in/week
10/28/2019	Field 36 South East	.35 in/day	.34 in/day
9/21/2019	Field 36 South Central	.71 in/week	.34 in/week
9/28/2019	Field 36 South Central	.60 in/week	.34 in/week
9/21/2019	Field 36 South East	.54 in/week	.34 in/week
9/28/2019	Field 36 South East	.60 in/week	.34 in/week
8/15/2019	N/A (Final Effluent Flow)	507350 GPD/day	425000 GPD/day
8/1/2019	Field 36 South Central	.43 in/day	.34 in/day
8/2/2019	Field 36 South Central	.45 in/day	.34 in/day
8/4/2019	Field 36 South Central	.46 in/day	.34 in/day
8/5/2019	Field 36 South Central	.57 in/day	.34 in/day
8/7/2019	Field 36 South Central	.43 in/day	.34 in/day
8/8/2019	Field 36 South Central	.52 in/day	.34 in/day
8/10/2019	Field 36 South Central	.47 in/day	.34 in/day
8/10/2019	Field 36 South Central	2.45 in/week	2.04 in/week

8/13/2019	Field 36 South Central	.52 in/day	.34 in/day
8/14/2019	Field 36 South Central	.57 in/day	.34 in/day
8/16/2019	Field 36 South Central	.69 in/day	.34 in/day
8/17/2019	Field 36 South Central	.69 in/day	.34 in/day
8/17/2019	Field 36 South Central	2.47 in/week	.34 in/week
8/20/2019	Field 36 South Central	.44 in/week	.34 in/week
8/21/2019	Field 36 South Central	.44 in/week	.34 in/week
8/24/2019	Field 36 South Central	.88 in/week	.34 in/week
8/1/2019	Field 36 South East	.43 in/day	.34 in/day
8/3/2019	Field 36 South East	.46 in/day	.34 in/day
8/3/2019	Field 36 South East	2.34 in/week	2.04 in/week
8/4/2019	Field 36 South East	.46 in/day	.34 in/day
8/6/2019	Field 36 South East	.39 in/day	.34 in/day
8/7/2019	Field 36 South East	.43 in/day	.34 in/day
8/9/2019	Field 36 South East	.44 in/day	.34 in/day
8/10/2019	Field 36 South East	.47 in/day	.34 in/day
8/10/2019	Field 36 South East	2.18 in/week	2.04 in/week
8/12/2019	Field 36 South East	.46 in/day	.34 in/day
8/14/2019	Field 36 South East	.57 in/day	.34 in/day
8/15/2019	Field 36 South East	.93 in/day	.34 in/day
8/17/2019	Field 36 South East	.69 in/day	.34 in/day
8/17/2019	Field 36 South East	2.65 in/week	.34 in/week
8/19/2019	Field 36 South East	.45 in/day	.34 in/day
8/21/2019	Field 36 South East	.44 in/day	.34 in/day
8/24/2019	Field 36 South East	1.08 in/week	.34 in/week
8/2/2019	Field 36 South West	.45 in/day	.34 in/day

8/3/2019	Field 36 South West	.46 in/day	.34 in/day
8/3/2019	Field 36 South West	2.26 in/week	2.04 in/week
8/5/2019	Field 36 South West	.57 in/day	.34 in/day
8/6/2019	Field 36 South West	.39 in/day	.34 in/day
8/8/2019	Field 36 South West	.52 in/day	.34 in/day
8/9/2019	Field 36 South West	.44 in/day	.34 in/day
8/12/2019	Field 36 South West	.46 in/day	.34 in/day
8/13/2019	Field 36 South West	.52 in/day	.34 in/day
8/15/2019	Field 36 South West	.93 in/day	.34 in/day
8/16/2019	Field 36 South West	.69 in/day	.34 in/day
8/17/2019	Field 36 South West	2.61 in/week	.34 in/week
8/19/2019	Field 36 South West	.45 in/day	.34 in/day
8/20/2019	Field 36 South West	.44 in/day	.34 in/day
8/24/2019	Field 36 South West	1.08 in/week	.34 in/week
7/24/2019	Field 36 South Central	.53 in/day	.34 in/day
7/26/2019	Field 36 South Central	.64 in/day	.34 in/day
7/29/2019	Field 36 South Central	.58 in/day	.34 in/day
7/30/2019	Field 36 South Central	.48 in/day	.34 in/day
7/1/2019	Field 36 South East	.63 in/day	.34 in/day
7/25/2019	Field 36 South East	.64 in/day	.34 in/day
7/28/2019	Field 36 South East	.39 in/day	.34 in/day
7/29/2019	Field 36 South East	.58 in/day	.34 in/day
7/31/2019	Field 36 South East	.48 in/day	.34 in/day
7/26/2019	Field 36 South West	.64 in/day	.34 in/day
7/28/2019	Field 36 South West	.39 in/day	.34 in/day
7/30/2019	Field 36 South West	.48 in/day	.34 in/day

7/31/2019	Field 36 South West	.48 in/day	.34 in/day
6/1/2019	Field 36 South Central	.40 in/week	.34 in/week
6/8/2019	Field 36 South Central	.37 in/week	.34 in/week
6/29/2019	Field 36 South Central	.49 in/week	.34 in/week
6/1/2019	Field 36 South East	.39 in/week	.34 in/week
6/8/2019	Field 36 South East	.39 in/week	.34 in/week
6/15/2019	Field 36 South East	.40 in/week	.34 in/week
6/22/2019	Field 36 South East	.51 in/week	.34 in/week
5/4/2019	Field 36 South Central	.37 in/week	.34 in/week
5/18/2019	Field 36 South Central	.41 in/week	.34 in/week
5/4/2019	Field 36 South East	.39 in/week	.34 in/week
5/11/2019	Field 36 South East	.55 in/week	.34 in/week
4/6/2019	Field 36 South Central	.43 in/week	.34 in/week
4/13/2019	Field 36 South Central	.38 in/week	.34 in/week
4/20/2019	Field 36 South Central	.43 in/week	.34 in/week
4/27/2019	Field 36 South Central	.39 in/week	.34 in/week
4/6/2019	Field 36 South West	.43 in/week	.34 in/week
4/13/2019	Field 36 South West	.38 in/week	.34 in/week
4/20/2019	Field 36 South West	.43 in/week	.34 in/week
4/27/2019	Field 36 South West	.39 in/week	.34 in/week
3/16/2019	Field 36 South Central	.47 in/week	.34 in/week
3/16/2019	Field 36 South West	.47 in/week	.34 in/week
2/2/2019	Field 36 South Central	.36 in/week	.34 in/week
2/2/2019	Field 36 South West	.36 in/week	.34 in/week
1/19/2019	Field 36 South Central	.37 in/week	.34 in/week
1/2/2019	Field 36 South West	.62 in/day	.34 in/day

1/5/2019	Field 36 South West	.75 in/week	.34 in/week
1/12/2019	Field 36 South West	.45 in/week	.34 in/week
1/19/2019	Field 36 South West	.37 in/week	.34 in/week
12/1/2018	Field 36 South West	.81 in/week	.34 in/week
12/8/2018	Field 36 South West	.89 in/week	.34 in/week
12/15/2018	Field 36 South West	.80 in/week	.34 in/week
12/22/2018	Field 36 South West	.79 in/week	.34 in/week
11/10/2018	Field 36 South West	.94 in/week	.34 in/week
11/14/2018	Field 36 South West	.40 in/day	.34 in/day
11/17/2018	Field 36 South West	.85 in/week	.34 in/week
11/24/2018	Field 36 South West	.39 in/week	.34 in/week
9/1/2018	Field 36 South East	.49 in/week	.34 in/week
9/22/2018	Field 36 South East	.35 in/week	.34 in/week
9/8/2018	Field 36 South West	.35 in/week	.34 in/week
9/22/2018	Field 36 South West	.62 in/week	.34 in/week
8/1/2018	Field 36 South Central	.44 in/day	.34 in/day
8/3/2018	Field 36 South Central	.43 in/day	.34 in/day
8/4/2018	Field 36 South Central	.49 in/day	.34 in/day
8/6/2018	Field 36 South Central	.78 in/day	.34 in/day
8/9/2018	Field 36 South Central	.44 in/day	.34 in/day
8/2/2018	Field 36 South East	.59 in/day	.34 in/day
8/25/2018	Field 36 South East	.35 in/week	.34 in/week
8/27/2018	Field 36 South East	.42 in/day	.34 in/day
8/1/2018	Field 36 South West	.44 in/day	.34 in/day
8/2/2018	Field 36 South West	.59 in/day	.34 in/day
8/4/2018	Field 36 South West	.49 in/day	.34 in/day

8/4/2018	Field 36 South West	2.10 in/week	2.04 in/week
8/7/2018	Field 36 South West	.57 in/day	.34 in/day
8/18/2018	Field 36 South West	.36 in/week	.34 in/week
8/3/2018	Field 37	.65 in/day	.34 in/day
7/20/2018	Field 36 South Central	.38 in/day	.34 in/day
7/23/2018	Field 36 South Central	.45 in/day	.34 in/day
7/24/2018	Field 36 South Central	.45 in/day	.34 in/day
7/26/2018	Field 36 South Central	.42 in/day	.34 in/day
7/27/2018	Field 36 South Central	.51 in/day	.34 in/day
7/21/2018	Field 36 South East	.4 in/day	.34 in/day
7/26/2018	Field 36 South East	.42 in/day	.34 in/day
7/28/2018	Field 36 South East	.52 in/day	.34 in/day
7/31/2018	Field 36 South East	.4 in/day	.34 in/day
7/24/2018	Field 36 South West	.45 in/day	.34 in/day
7/27/2018	Field 36 South West	.51 in/day	.34 in/day
7/31/2018	Field 36 South West	.4 in/day	.34 in/day
7/17/2018	Field 37	.41 in/day	.34 in/day
7/20/2018	Field 37	.56 in/day	.34 in/day
7/23/2018	Field 37	.67 in/day	.34 in/day
7/28/2018	Field 37	.78 in/day	.34 in/day
7/13/2018	Field 39	.59 in/day	.1 in/day
7/14/2018	Field 39	.59 in/day	.1 in/day
7/14/2018	Field 39	1.19 in/week	.7 in/week
7/15/2018	Field 39	.59 in/day	.1 in/day
7/16/2018	Field 39	.69 in/day	.1 in/day
7/18/2018	Field 39	.69 in/day	.1 in/day

7/19/2018	Field 39	.69 in/day	.1 in/day
7/21/2018	Field 39	2.67 in/week	.7 in/week
6/2/2018	Field 36 South West	.58 in/week	.34 in/week
6/9/2018	Field 36 South West	.91 in/week	.34 in/week
6/16/2018	Field 36 South West	.95 in/week	.34 in/week
5/12/2018	Field 36 South West	.44 in/week	.34 in/week
5/19/2018	Field 36 South West	.68 in/week	.34 in/week
5/26/2018	Field 36 South West	.62 in/week	.34 in/week
4/21/2018	Field 36 South West	.38 in/week	.34 in/week
3/3/2018	Field 36 South West	.73 in/week	.34 in/week
3/10/2018	Field 36 South West	.74 in/week	.34 in/week
3/17/2018	Field 36 South West	.79 in/week	.34 in/week
3/19/2018	Field 36 South West	.41 in/day	.34 in/day
3/24/2018	Field 36 South West	.87 in/week	.34 in/week
2/3/2018	Field 36 South West	.36 in/week	.34 in/week
2/10/2018	Field 36 South West	.38 in/week	.34 in/week
2/17/2018	Field 36 South West	.36 in/week	.34 in/week
2/24/2018	Field 36 South West	.69 in/week	.34 in/week
1/6/2018	Field 36 South West	.47 in/week	.34 in/week
1/13/2018	Field 36 South West	.42 in/week	.34 in/week
1/20/2018	Field 36 South West	.62 in/week	.34 in/week
1/27/2018	Field 36 South West	.56 in/week	.34 in/week

UNPERMITTED WASTEWATER EFFLUENT DISCHARGES

54. During an inspection conducted by EGLE on July 24, 2019, wastewater effluent was observed running off its Spray Fields to the Wetlands. Mich. Dep't of Env't, Great Lakes, and Energy, Violation Notice No. VN-009839 at 1.

55. During an inspection conducted by EGLE on August 4, 2020, ponded wastewater effluent and saturated soils were observed along the northern edge of spray field 36 leading up to the edge of the wetland area. Dark brown effluent resembling the visual characteristics of wastewater effluent from Burnette was also observed in the wetland adjacent to spray field 36. Mich. Dep't of Env't, Great Lakes, and Energy, Second Violation Notice No. SVN-00984 at 1.

56. During an inspection conducted by EGLE on July 27, 2021, wastewater effluent was observed running along the surface of the ground and ponding along the northern edge of spray field 36 leading up to the wetland area. Mich. Dep't of Env't, Great Lakes, and Energy, Violation Notice No. VN-012414 at 1-2.

57. According to an inspection conducted by EGLE, Burnette has not maintained adequate cover crop in field 38, particularly around wastewater spray heads, and there have been signs of erosion and channelization with exposed soils on field 36. *Id.* at 4.

58. Water sample results from the inner wetland indicated total arsenic concentration was 17 ug/L, which is above the generic groundwater surface water interface standard and surface water standard of 10 ug/L. According to EGLE, the overapplication of wastewater with a high concentration of BOD appears to have mobilized arsenic in the groundwater and has resulted in venting of impacted groundwater to the nearby wetlands. *Id.*

VI. CLAIM FOR RELIEF

COUNT I: VIOLATION OF SECTION 301(A) OF THE CLEAN WATER ACT

59. Each and every allegation set forth above is incorporated herein by reference.

60. Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant into waters of the United States from a “point source,” unless the discharge complies with various enumerated sections of the CWA. Section 301(a) prohibits discharges not authorized by or in violation of the terms of a valid National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

61. The Clean Water Act defines a point source as “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14).

62. Based on the hydrologic connectivity between the Wetlands to Burnette’s Spray Fields and Spencer Creek, the wetlands are considered waters of the United States according to the Clean Water Act.

63. On at least one occasion in the past five years, Burnette has been observed directly discharging wastewater effluent from its spray system into the Wetlands adjacent to its Spray Fields, which is an unpermitted discharge into waters of the United States in violation of the Clean Water Act.

64. On several occasions in the past five years, Burnette has discharged excessive amounts of wastewater effluent to its Spray Fields and has exceeded numeric limits in its Groundwater Permit regarding both discharge rates and pollutant limits.

65. Burnette's excessive application of wastewater effluent to its Spray Fields through its spray and drip irrigation system has caused its wastewater effluent to migrate from its Spray Fields to the Wetlands through the groundwater and through surface water runoff, which is an unpermitted discharge into waters of the United States in violation of the Clean Water Act.

66. Plaintiffs have a good faith belief that Burnette is in continuing violation of the Clean Water Act and its Groundwater Permit.

67. Each day of each violation of the Clean Water Act is a separate and distinct violation of Section 301(a) of the Clean Water Act, 33 U.S. C. § 1311(a).

68. By committing the acts alleged above, Burnette is subject to an assessment of civil penalties for all violations of the permit and the Clean Water Act occurring within the past five years pursuant to the Clean Water Act, Sections 309(d) and 505, 33 U.S.C. §§ 1319(d) and 1365.

69. An action for injunctive relief under the Clean Water Act is authorized by 33 U.S.C. § 1365(a). Continuing commission of the acts and omissions alleged above would irreparably harm the plaintiff, thier members, and the citizens of the State of Michigan.

COUNT II: VIOLATION OF THE MICHIGAN ENVIRONMENTAL PROTECTION ACT
("MEPA"), SECTION 1701 OF THE NATURAL RESOURCES AND ENVIRONMENTAL
PROTECTION ACT

70. Each and every allegation set forth above is incorporated herein by reference.

71. MEPA, which is codified as Section 1701 of the Natural Resources and Environmental Protection Act, MCL § 324.1701, authorizes any person to seek declaratory and equitable relief against any person for the protection of the air, water, and other natural resources and the public trust in these resources from pollution, impairment, or destruction.

72. MEPA was enacted in 1970 by the Michigan State Legislature to implement the State's constitutional commitment to the protection of natural resources. *See*, Const. 1963, Art. 4 § 52.

73. Burnette's actions and omissions as delineated throughout this Complaint—including but not limited to the excessive application of wastewater effluent with excessive concentrations of various pollutants—have already or are likely to pollute, impair, or destroy the water or other natural resources, including but not limited to the groundwater that is underlying and nearby its spray field, the adjacent Wetlands, Spencer Creek, and Elk Lake.

74. Plaintiffs lack an adequate remedy at law.

75. Plaintiffs seek a permanent injunction—along with any other available injunctive relief or equitable relief available under MEPA—against Burnette to require it to immediately cease any and all conduct that has already, is currently, or is likely to pollute, impair, or destroy the natural environment.

VII. RELIEF REQUESTED

Wherefore, Plaintiffs respectfully request that this Court grant the following relief:

1. Declare that the defendant has violated and continues to be in violation of the Clean Water Act, Section 301(a), 33 U.S.C. § 1311(a), for discharging pollutants into waters of the United States without authorization by a valid NPDES Permit;
2. Declare that the defendant has violated and continues to be in violation of Section 1701 of the Natural Resources and Environmental Protection Act, MCL § 324.1701, by polluting and impairing the groundwater underlying its Spray Fields, the Wetlands, Spencer Creek, and Elk Lake and its connecting waters.
3. Enjoin the defendant from further violating the Clean Water Act, Section 301(a), 33 U.S.C. § 1311(a), and Section 1701 of the Natural Resources and Environmental Protection Act, MCL § 324.1701.

4. Award plaintiff its reasonable costs of suit, including attorney, witness, and consultant fees, as provided for by Clean Water Act, Sections 309(d) and 505(a), 33 U.S.C. § 1365(d) and the Natural Resources Environmental Protection Act, Section 1703(3), MCL 324.1703(3).

5. Order defendant to pay civil penalties up to the statutory maximum of \$64,618 per day, per violation for each violation of the Act pursuant to 309(d) and 505(a) of the Act, 33 U.S.C. §§ 1319(d) and 1365(a), and 40 C.F.R. §§ 19.1-19.4.

6. Award such other relief as this Court may deem appropriate.

DATED this 7th day of June, 2023.

Respectfully Submitted,

GREAT LAKES ENVIRONMENTAL
LAW CENTER

s/Nicholas Leonard

s/Erin Mette

Nicholas Leonard (P79283)

Erin Mette (P83199)

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